

Office of the Secretary, Interior

§ 4.603

and standards that the Office of Hearings and Appeals will use in ruling on those applications.

(b) The regulations in this subpart apply to any application for an award of attorney fees and other expenses that is:

- (1) Pending on February 8, 2006; or
- (2) Filed on or after February 8, 2006.

§ 4.602 What definitions apply to this subpart?

As used in this subpart:

Act means section 203(a)(1) of the Equal Access to Justice Act, Public Law 96-481, 5 U.S.C. 504, as amended.

Adjudicative officer means the deciding official(s) who presided at the adversary adjudication, or any successor official(s) assigned to decide the application.

Adversary adjudication means any of the following:

- (1) An adjudication under 5 U.S.C. 554 in which the position of the Department or other agency is presented by an attorney or other representative who enters an appearance and participates in the proceeding;
- (2) An appeal of a decision of a contracting officer made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Interior Board of Contract Appeals pursuant to section 8 of that Act (41 U.S.C. 607);
- (3) Any hearing conducted under section 6103(a) of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.); or
- (4) Any hearing or appeal involving the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb et seq.).

Affiliate means:

- (1) Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant; or
- (2) Any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest.

Demand means the express demand of the Department or other agency that led to the adversary adjudication, but does not include a recitation by the Department or other agency of the maximum statutory penalty:

(1) In the administrative complaint; or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

Department means the Department of the Interior or the component of the Department that is a party to the adversary adjudication (e.g., Bureau of Land Management).

Final disposition means the date on which either of the following becomes final and unappealable, both within the Department and to the courts:

- (1) A decision or order disposing of the merits of the proceeding; or
- (2) Any other complete resolution of the proceeding, such as a settlement or voluntary dismissal.

Other agency means any agency of the United States or the component of the agency that is a party to the adversary adjudication before the Office of Hearings and Appeals, other than the Department of the Interior and its components.

Party means a party as defined in 5 U.S.C. 551(3).

Position of the Department or other agency means:

- (1) The position taken by the Department or other agency in the adversary adjudication; and
- (2) The action or failure to act by the Department or other agency upon which the adversary adjudication is based.

Proceeding means an adversary adjudication as defined in this section.

You means a party to an adversary adjudication.

§ 4.603 What proceedings are covered by this subpart?

(a) The Act applies to adversary adjudications conducted by the Office of Hearings and Appeals, including proceedings to modify, suspend, or revoke licenses if they are otherwise adversary adjudications.

(b) The Act does not apply to:

- (1) Other hearings and appeals conducted by the Office of Hearings and Appeals, even if the Department uses procedures comparable to those in 5 U.S.C. 554 in such cases;
- (2) Any proceeding in which the Department or other agency may prescribe a lawful present or future rate; or